IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

NO. 43

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et al.,
PETITIONERS,

V.

LEDBETTER ERECTION COMPANY, INC.

BRIEF AND ARGUMENT OF RESPONDENT

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On Writ of Certiorari to the Supreme Court of The State of Alabama

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BRIEF FOR THE RESPONDENT

QUESTIONS PRESENTED

Whether the jurisdiction of a state court to enjoin picketing for an unlawful purpose, contrary to the public policy of the state, has been superseded by the Labor Management Relations Act of 1947.

STATUTES INVOLVED

The pertinent Alabama statutes, Title 26, Section 383; Title 26, Section 387; Title 14, Sections 54, 57 of the Code of Alabama of 1940 are set forth in the appendix hereto attached.

STATEMENT

This case is before this Court on a writ of certiorari issued to review action of the Supreme Court of Alabama in refusing to dissolve a temporary writ of injunction. The sole issue raised in the court below, the sole issue raised here is whether the Alabama court had jurisdiction to enjoin picketing which was a secondary boycott and alleged to be violative of both the statutes of Alabama and the Federal statute. This question of jurisdiction we believe must be determined on the basis of whether, under any aspect of the facts shown by the record, the Alabama court had such jurisdiction. This is particularly true since there has been no final decree in the state courts, no finding of fact and the complainant below has full power to amend the bill of complaint at any time prior to such final decree.

The facts shown by the record are analogous to but somewhat converse to the facts in the Denver case.* The employees of Ledbetter Erection Company operated under a union shop contract (R. 3, 4). There was no labor dispute between Ledbetter Erection Company and its employees and the Petitioner Montgomery Building and Construction Trades Council was not seeking to represent Ledbetter Erection Company's employees. Bear Brothers, Inc., a general contractor, entered into a contract for the erection of an apartment house in Montgomery, Alabama and entered into a sub-contract with Ledbetter Erection Company for the erection of the structural steel used therein (R. 3). There was no connection between Ledbetter Erection Company and Bear Brothers other than this sub-con-

*National Labor Relations Board v. Denver Building and Construction Trades Council, 341 U. S. 675.

tract and Ledbetter Erection Company had no control over the employees of Bear Brothers (R. 7).

The complaint specifically alleged that the Trades Council knew of Ledbetter Erection Company's union shop contract and knew that Ledbetter Erection Company's employees would refuse to cross a picket line. (R. 7). The complaint further specifically alleged (R. 4) that the Trades Council did not represent employees of Bear Brothers. Nevertheless for the purpose of forcing Bear Brothers to recognize them as the exclusive bargaining representative of such employees, the Trades Council placed a picket line across the entrance to the apartment house. The bill further alleged that Ledbetter Erection Company's union employees were not willing to cross said picket line and the representatives of the union to which Ledbetter Erection Company's employees belonged had attempted to get such picket line removed but the Trades Council had failed or refused to remove the same (R. 5). The bill specifically alleged (R. 7) that such action of the Trades Council was a violation of the Statutes of Alabama; that such action amounted to an unlawful interference with Ledbetter Erection Company's business and its right to perform its contract with Bear Brothers; that such action was a combination or arrangement for the purpose of hindering, delaying or preventing Ledbetter Erection Company from carrying on a lawful business in violation of Section 54, Title 14 of the Code of Alabama of 1940 and constituted the use of unlawful means to prevent Ledbetter Erection Company from engaging in a lawful business in violation of Section 57, Title 14, of the Code of Alabama of 1940.

At no place did the bill of complaint allege that eith-

er the business of Ledbetter Erection Company or the business of Bear Brothers, Inc., in the erection of said apartment house affected interstate commerce. The bill did allege in Paragraph 11 (R. 5) that the action of the Trades Council amounted to secondary picketing as defined and prohibited in Section 8B(4) of the National Labor Relations Act as amended and induced or encouraged Ledbetter Erection Company's employees to engage in a concerted refusal to perform services for the object of forcing or requiring another employer to recognize or bargain with the labor organization as the representative of Bear Brothers, Inc., employees, where such labor organization has not been certified as a representative of such employees and to force or to require Ledbetter Erection Company, Inc., to cease doing business with Bear Brothers, Inc.

The bill specifically alleged that if the picket line was maintained Ledbetter Erection Company would suffer irreparable damage for which it would have no adequate remedy at law; that the remedy of an action and damages provided by Section 303 of the Taft-Hartley Act (29 U.S.C.A., Section 187) was inadequate (R. 5). In addition to Complainant Ledbetter Erection Company's expensive machinery being kept idle its experienced workmen with whom it had a union contract had notified Ledbetter Erection Company that unless the picket line was removed that day, November 20, they would seek employment elsewhere and it might become necessary for Ledbetter Erection Company to default in its contract with Bear Brothers, Inc., and be subjected to suits for damages for such breach.

Upon consideration of this sworn bill of complaint alleging irreparable injury, in accordance with the Ala-

bama Practice a temporary writ of injunction was issued on the same day.**

The Trades Council originally filed an answer (R. 14-18) claiming that the erection of the building was entirely an intrastate job and the National Labor Relations Board have no jurisdiction thereof. Thereafter the Trades Council withdrew this answer and its motion to dissolve originally filed and moved to dissolve the injunction solely on its challenge to the jurisdiction of the state court (R. 19-21).

The motion to dissolve was submitted on affidavits appearing at Record pages 21 to 32. The affidavit of the Vice-President of Bear Brothers, Inc. (R. 22) showed that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; however, at no place was it made to appear by the affidavits of any of the parties thereto that the operations of Bear Brothers, Inc., and Ledbetter Erection Company combined would suffice to meet the established administrative standards of either a direct inflow of goods from out of state sources valued at $500,000 per year or an indirect flow value at $1,000,000 per year. No attempt was made by the Trades Council to present such facts sufficient to meet the administrative standards of the National Labor Relations Board for assuming jurisdiction. Were this case on final decree, we believe there would be a finding in the record that the amount involved was so small that the Board, for administrative reasons, would not take jurisdiction; and

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**The printed transcript of the record and Petitioner's brief refers to the date of filing as October 20, 1950. Reference to the affidavits (R. 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, shows that this is a typographical error for the affidavits of all parties show that the picket line was not established until November 1, 1950 and continued until November 20, 1950.

that in addition a few weeks would probably elapse between the time of filing the complaint and filing the application of the National Labor Relations Board to the Federal District Court for a restraining order; during which time Ledbetter Erection Company would be subjected to irreparable injury from the unlawful acts of the Trades Council.

SUMMARY OF ARGUMENT

The Congress did not intend to make of the Taft-Hartley Act a shield to protect unlawful conduct.

This Court has many times recognized the right of the States to set the limits of permissible contest open to industrial combatants.

International Brotherhood v. Hanke, 339 U.S. 469.

As part of this State power, the State courts have the right and the duty to protect citizens from irreparable injury from picketing for a purpose which is violative of the public policy of the State as established by its laws or court decisions.

Giboney v. Empire Storage and Ice Company, 336 U. S. 490;

Carpenters and Joiners Union v. Ritter's Cafe; 350 U. S. 722;

Hughes v. Superior Court; 339 U. S. 460.

Even prior to the Labor Management Relations Act of 1947, a secondary boycott was generally held to be against the public policy.

A secondary boycott was against the public policy of the State of Alabama as announced in its statutes.

To construe Federal legislation as not needlessly to forbid pre-existing State authority, is to respect our Federal system. Any indulgence in construction should be in favor of the States; and the intention of Congress to exclude the states from exercising their police power must be clearly manifested.

Allen Bradley Local v. Wisconsin Employment Relations Board, 315 U. S. 740;

Dissenting opinion of Justice Frankfurter;

Bethlehem Steel Company v. New York State Labor Board, 330 U. S. 767, at 780;

Dissenting opinion, *Amalgamated Association v. Wisconsin Employment Relations Board*, 340 U. S. 383.

The lawful rights of a citizen, whether arising from a legitimate exercise of a State or national power, unless excepted by express constitutional limitation, or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority state, or nation, creating them.

Minneapolis and St. Louis R. Co. v. Bombolis; 241 U. S. 211, 36 S. Ct. 595, 598;

Pennsylvania R. Co. v. Puritan Coal Co., 237 U. S. 121, 35 S. Ct. 484.

It is inconceivable that Congress intended by the Labor Management Relations Act, to protect an action characterized by the Congress as an unfair labor practice, by displacing pre-existing state authority in cases where for administrative reasons the National Labor

Relations Board did not act; and thereby to create a sanctuary to which the offending union might safely repair with complete immunity in violation of the public policy of both the state and the United States.

Oregon ex rel. Tidewater-Shaver Barge Lines v. Dobson, 30 LRRM 2345 (Oregon Sup. Ct. June 4, 1952)

ARGUMENT

Petitioners, throughout, have sought to make it appear that the sole basis for the application for a temporary injunction was the violation of the secondary boycott provisions of the Taft-Hartley Act which, according to Petitioners' brief "is not seriously controverted by Petitioners." (Brief Page 12). That is not correct. The bill of complaint specifically alleged that the Petitioners' conduct was in violation of the statutes of Alabama. The Supreme Court of Alabama, in its opinion, (R. 50) recognized this claim and stated: "We wish here to refer again to the principle that when a complainant comes into a court of equity seeking an injunction for the purpose of protecting a right, it is immaterial whether that right is one conferred by state or federal law *unless prohibited by federal law.* It is the existence of the right which is material and not the source of its enactment, provided the enacting power had due authority. But when a complainant comes into court it is not for him to choose whether his right is such as is conferred by the state or federal law. When properly analyzed his right is dependent upon whether the one or the other is there effective, and it is not open to him to make a selection, for only one law obtains to fix the status of a given situation. A person cannot legislate by choosing the applicable law."

This we submit was merely a recognition and restatement of the principles stated in the case of *Minneapolis and St. Louis R. R. Co. v. Bombolis*, 241 U. S. 211, where it is stated:

> "that lawful rights of the citizen, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation, or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them."

Under the present state of the record, that is, without any final decree, without any finding of fact, and with full rights to the complainant below to amend the bill of complaint, the very grave issues of this case must necessarily be determined as a more or less abstract principle of law. There is no allegation in the bill that interstate commerce is or was affected by the work stoppage in question. It would be entirely proper for the complainant below to amend the bill of complaint and omit any reference to the secondary boycott provisions of the Taft-Hartley Act. It would be entirely proper for the complainant below to amend the bill of complaint and allege that, if interstate commerce is affected, under the present administrative regulations and statement of policy of the National Labor Relations Board, that Board would refuse to accept jurisdiction for administrative reasons, because of the small impact upon interstate commerce. However the same issue would still be before the court and that is, whether under any circumstances a state court can protect its citizens from irreparable injury by an act which is

characterized by the Taft-Hartley Act as an unfair labor practice; whether Congress, by so characterizing such act as an unfair labor practice meant to preempt the entire field to the exclusion of preexisting state authority. Were the bill so amended, this same issue would no doubt be raised by way of affirmative motion by the Trades Council, that interstate commerce was affected and the National Labor Relations Board had exclusive jurisdiction over such unfair labor practice.

This case we submit is merely another of the long series of cases requiring accommodation between the assertions of new federal authority and the functions of the individual states, so as to reflect the historic and persistent concerns of our dual system of government. We did not claim in the courts below, we do not now claim, that Section 8B(4) of the Labor Management Relations Act of 1947 vested in the individual or in the state any private right. Section 8B(4), established that a secondary boycott, generally held to be against the public policy of the individual state, was likewise against the public policy of the United States. It is the claim of the Petitioner that the effect of this was to preempt to the National Labor Relations Board, to the exclusion of the states, all control over such unlawful act. This argument of the petitioner, if sound, would necessarily require the holding that Congress likewise preempted to the National Labor Relations Board, to the exclusion of the states, all remedy against violence on the picket line which was likewise made an unfair labor practice by Section 8(b)(1) of the Act. We submit that a consideration of our dual system of government, a consideration of the laws that existed prior to the Labor Management Relations Act, and a consid-

eration of the drastic effects of such holding, require a different conclusion.

Many times, since the *Thornhill* case, this court has constantly reiterated and upheld "the power of a state to set the limits of permissible contest open to industrial combatant." As a necessary part of that state power, this court has many times upheld the right of the state court to enjoin peaceful picketing for a purpose which is against the policy of the state as established by its statutes or by its court decisions. In *Building Service Employees International Union v. Gazzam*, 339 U. S. 532, this court upheld an injunction by the state court of the State of Washington, enjoining picketing for the purpose of compelling the employer to coerce his employees to join the picketing union. The public policy of the State of Alabama as expressed in Title 26, Section 383, Code of Alabama of 1940, is almost identical with that of the Washington Statute involved in the *Gazzam* case, that every person shall be free to join or not to join any labor organization and shall be free from force, coercion or intimidation therein. The picketing in the instant case was carried on by the union for the purpose of preventing the union shop employees of Ledbetter Erection Company from performing their duty, and thereby to force Ledbetter Erection Company to put economic pressure on Bear Brothers, Inc., to coerce their non-union employees to join the Montgomery Building and Construction Trades Council. The purpose of the picketing here enjoined was therefore just as unlawful an attempt to coerce the employees of Bear Brothers, Inc. as was the purpose of the picketing in the *Gazzam* case; and unless that jurisdiction was superseded entirely by the Labor Management Relations Act of 1947, the injunc-

tion issued by the Alabama courts should be upheld just as was the Washington injunction in the *Gazzam* case.

In *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490, the union engaged in peaceful picketing for the purpose of compelling Empire Storage & Ice Company to stop selling ice to non-union peddlers. The Missouri Court held that such action would be in violation of the Missouri statute prohibiting combinations in restraint of trade, and issued an injunction against such picketing. This court in a unanimous opinion upheld this injunction. In the instant case the picketing was for the purpose of preventing Ledbetter from carrying on its lawful contract with Bear Brothers, Inc., and just as much in violation of Title 14, Section 54 of the Code of Alabama of 1940 as was the action enjoined in the *Giboney* case.

In the California case, *Hughes v. Superior Court*, 339 U. S. 460, this court upheld a decree of the State court enjoining picketing to accomplish a purpose which was against the public policy of California, although this public policy was expressed by the judicial organ of the state rather than by the legislature.

Unless, therefore, Congress intended to preempt the entire field of all labor relations where interstate commerce might be affected, no matter how slightly, the state court under these decisions had both the right and duty to protect its citizens from irreparable injury by picketing for a purpose contrary to the public policy of the state. We do not think it can be seriously controverted that a secondary boycott is contrary to the public policy of the State of Alabama. Practically every court which passed upon this question has declared secondary

boycotts to be unlawful, either upon the ground that they constitute unlawful coercions or upon the broad principle that one not a party to industrial strife cannot, against his will, be made an ally of one of the parties for the purpose of accomplishing the destruction of the other. 31 *Am. Jur.* 959 and numerous cases there cited. This was recognized by Senator Taft, sponsor of the Labor Management Relations Act who stated:

> " . . . Under the provisions of the Norris LaGuardia Act, it became impossible to stop the secondary boycott or any other kind of strike, *no matter how unlawful it may have been at common law.* All this provision of the bill does is to reverse the effect of the law as to secondary boycotts." (93 Cong. Rec. 4198).

It was thereby recognized by Senator Taft that secondary boycotts were unlawful without any statute so providing.

In addition thereto, the statutes of Alabama have established a public policy of the State of Alabama as opposed to such picketing and boycotts. In fact the public policy of the State as expressed by its legislature went so far that two of the statutes were stricken down as unconstitutional, as going beyond the power of the state to set the permissible limits open to industrial combatants.

We believe it would be helpful, in determining the public policy of the State of Alabama, to refer to its various statutes and the history thereof. As early as 1903 the Legislature of Alabama passed statutes making it a crime for any two or more persons to conspire together for the purpose of preventing any person from

carrying on any lawful business within the State of Alabama or for the purpose of interfering with the same. These statutes were carried forward into the Code of Alabama of 1907 as Chapter 176 "Boycotting and Blacklisting."

Shortly prior to 1921 the State of Alabama suffered from a disastrous coal strike. It was then discovered that the statutes relating to strikes and boycotts were inadequate so that the civil authorities were unable to prevent or check many of these wrongful acts. The Governor of Alabama called a special session of the Legislature of Alabama and one of the reasons of this special call was to strengthen the existing laws relating to boycotts. That portion of the Governor's message to the Legislature is included in the appendix of this brief.

Pursuant to the Governor's message, the Legislature of Alabama passed the Act approved October 29, 1921 (Acts of Special Session of 1921, Page 31 et seq.) This act is likewise included in the appendix to this brief and was carried forward into the Code of Alabama of 1923 as Chapter 91 "Boycotting and Blacklisting."

Section 1 of that Act which is still in effect and is now Title 14, Section 54 of the Code of Alabama of 1940, prohibited any two or more persons, without a just cause or legal excuse for so doing, from entering into any combination, conspiracy or understanding for the purpose of hindering, delaying or preventing any other persons from carrying on any lawful business. Section 2 of this Act established the public policy of the State as prohibiting loitering or picketing. This is the statute which this court held unconstitutional in the *Thornhill* case (310 U. S. 88, 84 L. ed. 1093) since

it was so broad that it would prohibit even peaceful picketing for a lawful purpose and therefore violated the constitutional prohibitions against free speech.

Section 4 of the Act of 1921, now Title 14, Section 57 and still in effect in Alabama, prohibited any person, firm, corporation or association of persons from using force, threats, intimidation, *or other unlawful means* to prevent any other person, firm or corporation from engaging in any lawful occupation or business. This statute is particularly pertinent since the union in this case concedes that it was using unlawful means to prevent Ledbetter Erection Company from carrying out its lawful contract with Bear Brothers, Inc.

In addition to the above statutes, in 1943 the Legislature of Alabama passed the Bradford Act, No. 298 Ala. Laws of 1943, (Code of 1940, Title 26, Section 376 et seq). That statute was construed by the Supreme Court of Alabama in the case of *Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 18 So. 2d 810 and was before this court in the cases of *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450 and *Congress of Industrial Organization v. McAdory*, 325 U. S. 472. This Court declined to review the decision of the Alabama Court and declined to hold that there was any conflict between this statute and the National Labor Relations Act. There were two sections of the Bradford Act which are pertinent to this case. Section 8 of the Act codified as Title 26, Section 383 was almost identical with the Washington statute before this Court in the *Gazzam case* and guaranteed to every person the freedom to join or refrain from joining a labor organization. Section 12 of the Act was an effort to further strengthen the boycott provisions of the laws of Alabama by making it unlaw-

ful for any employee to refuse to handle, install, use or work on any particular material because not produced, processed or delivered by members of a labor organization. This statute, indicative of the legislative intent, was stricken down by the Supreme Court of Alabama since it made no reference to a conspiracy or to the concerted action of two or more persons and dealt solely with individual protests of the individual workman.

Under this long line of legislative history, we submit that it is plain that a secondary boycott is contrary to the public policy of the State of Alabama. Under the cases of this Court cited above, it is equally plain that, unless their authority has been completely superseded by the Labor Management Relations Act, the courts of the State of Alabama have the right to enjoin picketing to accomplish such a purpose, contrary to the public policy of the State. The one question therefore is whether by the Labor Management Relations Act of 1947, Congress intended to preempt this entire field to the National Labor Relations Board and to prohibit any action by the State under its police power against any acts characterized by the Congress as "unfair labor practice." Stated in other words, was it the intent of Congress to make of the Labor Management Relations Act a shield under which unions could engage in acts contrary to the public policy of both the state and the United States, free from any action by the state under its police power

We believe the answer to this question is found in the unanimous decision of this Court in *Allen-Bradley Local vs. Wisconsin Employment Relations Board*, 315 U. S. 740. The question there presented was whether an order of the Wisconsin Employment Relations Board entered under the Wisconsin Employment Peace

Act was void as repugnant to the provisions of the National Labor Relations Act. We recognize that in that case the court was construing the Labor Relations Act prior to the 1947 amendment, and that Act did not govern employee or union activity of the type there enjoined. Nevertheless the language of the court is equally apt here:

> "Furthermore, this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested.' Napier v. Atlantic Coast Line R. Co. 272 US 605, 611, 71 L ed 432, 438, 47 S Ct 207, and cases cited; Kelly v. Washington, 302 US 1, 10, 82 L ed 3, 10, 58 S Ct 87; South Carolina State Highway Dept. v. Barnwell Bros. 303 US 177, 82 L ed 734, 58 S Ct 510; H. P. Welch Co. v. New Hampshire, 306 US 79, 85, 83 L ed 500, 505, 59 S Ct 438; Maurer v. Hamilton, 309 US 598, 614, 84 L ed 969, 980, 60 S Ct 726, 135 ALR 1347; Watson v. Buck, 313 US 387, 85 L ed 1416, 61 S Ct 962, 136 ALR 1426, supra. . . .
>
> "If the order of the state Board affected the status of the employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long

obtained in this Court. See Sinnot v. Davenport, 22 How. (US) 227, 243, 16 L ed 243, 247.

"In sum, we cannot say that the mere enactment of the National Labor Relations Act without more excluded state regulation of the type which Wisconsin has exercised in this case. It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired. Indeed if the portions of the state Act here invoked are invalid because they conflict with the federal Act, then so long as the federal Act is on the books it is difficult to see how any State could under any circumstances regulate picketing or disorder growing out of labor disputes of companies whose business affects interstate commerce."

Likewise if the power of the state to enjoin picketing for a purpose contrary to the public policy of the state, is superseded by the passage of the Taft-Hartley Act, then the power of the state, under its police power, to stop violence on the picket line is likewise superseded. Section 8(b)(1) makes coercion of employees an unfair labor practice and vests in the National Labor Relations Board just as much jurisdiction over such violence or coercion as is vested in them over secondary boycotting. Nevertheless, this Court in the case of *National Labor Relations Board vs. International Rice Milling Co.*, 341 U. S. 665, at 672 said this:

"In the instant case the violence on the picket line is not material. The complaint was not based upon that violence, as such. To reach it, the complaint more properly would have relied upon S

8(b) (1) (A) or would have addressed itself to local authorities."

We submit that that statement shows a recognition by this Court that the mere fact that an act was characterized as an unfair labor practice did not exclude action by the local authorities under their police power.

We believe the principle is well established that the exercise by the state of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so "direct and positive" that the two acts cannot "be reconciled or consistently stand together." In *Kelly v. Washington*, 302 U. S. 9, 10, this Court speaking through Mr. Chief Justice Hughes, said:

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. Minnesota Rate Cases (Simpson v. Shepard) 230 U. S. 352, 402, 57 L. ed. 1511, 1542, 33 S. Ct. 729, 48 L.R.A. (N.S.) 1151, Ann. Cas. 1916A, 18. States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible

is not forbidden or displaced. *The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'* Sinnot v. Davenport, 22 How. 227, 243, 16 L. ed. 243, 247; Missouri, K. & T. R. Co. v. Haber, 169 U. S. 613, 623, 624, 42 L. ed. 878, 881, 882, 18 S. Ct. 488; Reid v. Colorado, 187 U. S. 137, 148, 47 L. ed 108, 114, 23 S. Ct. 92; Crossman v. Lurman, 192 U. S. 189, 199, 200, 48 L. ed. 401, 405, 406, 24 S. Ct. 234; Asbell v. Kansas, 209 U. S. 251, 257, 258, 52 L. ed. 778, 781, 782, 28 S. Ct. 485, 14 Ann. Cas. 1101; Missouri P. R. Co. v. Larabee Flour Mills Co. 211 U. S. 612, 623, 53 L. ed. 352, 361, 29 S. Ct. 214; Savage v. Jones, 225 U. S. 501, 533, 56 L. ed. 1182, 1194, 32 S. Ct. 715; Atlantic Coast Line v. Georgia, 234 U. S. 280, 293, 294, 58 L. ed. 1312, 1318, 1319, 34 S. Ct. 829; Carey v. South Dakota, 250 U. S. 118, 122, 63 L. ed. 886, 888, 39 S. Ct. 403; Atchinson, T. & S. F. R. Co. v. Railroad Commission, 283 U. S. 380, 392, 393, 75 L. ed. 1128, 1136, 1137, 51 S. Ct. 553; Mintz v. Baldwin, 289 U. S. 346, 350, 77 L. ed. 1245, 1249, 53 S. Ct. 611; Gilvary v. Cuyahoga Valley R. Co. 292 U. S. 57, 78 L. ed. 1123, 54 S. Ct. 573, supra."

(Italics supplied).

In *International Union v. Wisconsin Employment Relations Board*, 336 U. S. 245, at 253, the Court stated:

"However, as to coercive tactics in labor con-

> troversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that 'the intention of Congress to exclude the States from exercising their police power must be clearly manifested.' Allen-Bradley Local, U.E.R.M.W. v. Wisconsin Employment Relations Bd. 315 US 740, 749, 750."

Again, in the case of *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 312, this Court reiterated the principle:

> ". . . that in cases of concurrent power over commerce State law remains effective so long as Congress has not manifested an unambiguous purpose that it should be supplanted. See, e. g., Sinnot v. Davenport, 22 How. (US) 227, 16 L ed 243; Missouri, K. & T. R. Co. v. Haber, 169 US 613, 42 L ed 878, 18 S Ct 488."

Learned counsel for the Petitioner and for the National Labor Relations Board do not undertake to point out any respect in which there is a repugnance or conflict so "direct and positive" that the police power of the state cannot "be reconciled or consistently stand together" with action by the National Labor Relations Board. Brief Amicus Curiae on behalf of the Board (Brief Page 13) undertakes to point out two critical respects in which the action of the state court differs from the procedure set up by the National Act. These are that the private party applied directly to the Court instead of filing charges with the Board; and that application for injunctive relief was made to the state court instead of to the Federal court. We respectfully

submit that these are differences in procedure only with no difference whatever in the ultimate result. The relief granted by the State court was the identical relief which it was the duty of the National Labor Relations Board to secure at the hands of the District Court. We submit that the granting of the same relief at the hands of the State court is in no way a direct and positive repugnance or conflict with the securing of the identical relief by the National Labor Relations Board from the Federal Court.

It is argued by the Petitioner, however, that coincidence is as ineffective as opposition. We think this argument is fully answered by the majority opinion in *California v. Zook*, 336 U. S. 725, at 729:

> "But respondents seize upon only one part of the familiar phrase in Charleston & W. C. R. Co. v. Varnville Furniture Co. 237 US 597, 604, 59 L ed 1137, 1140, 35 S Ct 715, Ann. Cas 1916D 333. We said that when 'Congress has taken the particular subject-matter in hand coincidence is as ineffective as opposition. . . .' See also, Pennsylvania R. Co. v. Public Serv. Commission, 250 US 566, 569, 63 L ed 1142, 1145, 40 S Ct 36, PUR 1920 A 909,; Missouri P. R. Co. v. Porter, 273 US 341, 346, 71 L ed 672, 675, 47 S Ct 383. Respondents' argument assumes the stated premise—that Congress has 'taken the particular subject matter in hand' to the exclusion of state laws. The Court could not have intended to enunciate a mechanical rule, to be applied whatever the other circumstances indicating congressional intent. . . .
>
> "Coincidence is only one factor in a complicat-

> ed pattern of facts guiding us to congressional intent. As the Court stated in the Pennsylvania Railway Case (250 US at 569, 63 L ed 1145, 40 S Ct 36, PUR 1920A 909), the 'question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the State, must be answered by a judgment upon the particular case.' Statements concerning the 'exclusive jurisdiction' of Congress beg the only controversial question: whether Congress intended to make its jurisdiction exclusive."

In that case the Court reiterated that if the claim is conflict in terms, it must be clear that the federal provisions are inconsistent with those of the state and that congressional purpose to displace local laws must be clearly manifested. The Court further pointed out that it was difficult to believe that the Interstate Commerce Commission intended to deprive itself of effective aid from local officers experienced in the kind of enforcement necessary to combat the evil, aid of particular importance in view of the I. C. C.'s small staff. Likewise in this case it is difficult to believe that Congress intended to deprive the National Labor Relations Board from effective aid from local courts or police power; intended to place upon the National Labor Relations Board the entire burden of policing all actions arising in a labor dispute regardless of how small the impact upon interstate commerce. That is particularly true since the Board by its administrative regulations has recognized its inability to cope with such problems.

Petitioner in brief refers to the dissenting opinion of four members of this Court in the case of *California*

v. Zook, 336 U. S. 725. We might well refer to the dissenting opinion in *Bethlehem Steel Company v. N. Y. Labor Board*, 330 U. S. 767. As we understand the majority opinion in that case, it recognized the validity of the police power of the states in the interval pending minute and multitudinous administrative regulation of the subject delegated to the administrative tribunal. The majority opinion held, however, that failure of the Federal officials in that case to exercise their full authority took on the character of a ruling that no such regulation was appropriate. Even under the circumstances the dissenting opinion stated:

> "Federal legislation of this character must be construed with due regard to accommodation between the assertions of new federal authority and the functions of the individual States, as reflecting the historic and persistent concerns of our dual system of government. Since Congress can, if it chooses, entirely displace the States to the full extent of the far-reaching Commerce Clause, Congress needs no help from generous judicial implications to achieve the supersession of State authority. To construe federal legislation so as not needlessly to forbid pre-existing State authority is to respect our federal system. Any indulgence in construction should be in favor of the States, because Congress can speak with drastic clarity whenever it chooses to assure full federal authority, completely displacing the States.
>
> "This is an old problem and the considerations involved in its solution are commonplace. But results not always harmonious have from time to time been drawn from the same precepts. In law also the emphasis makes the song. It may make a

decisive difference what view judges have of the place of the States in our national life when they come to apply the governing principle that for an Act of Congress completely to displace a State law 'the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.' Sinnot v. Davenport, 22 How (US) 227, 243, 16 L ed 243, 247. Congress can speak so unequivocally as to leave no doubt. But real controversies arise only when Congress has left the matter in doubt, and then the result depends on whether we require that actual conflict between State and federal action be shown, or whether argumentative conflict suffices."

Since Congress can state with decisive clarity, we look to the language of the act to see whether it was the intention of Congress to effectively tie the hands of local authorities in actions to prevent unfair labor practices. The language of the statute itself discloses no such congressional purpose. The Wagner Act specifically provided that the power of the Board to prevent any person from engaging in any unfair labor practice should be exclusive. This provision was entirely omitted from the Labor Management Relation Act and under the language of the Act this power of the Board is no longer exclusive.

Had Congress not deleted the word "exclusive," there would have been a plain congressional expression of an intent to preempt the entire field to the National Labor Relations Board. In the absence of such word, however, there is certainly no plainly expressed intent to accomplish the drastic innovation of a wholly new scheme of enforcement and to supersede the well es-

tablished authority of the State courts. To use the language of Judge Parker in the case of *Amazon Cotton Mill v. Textile Workers Union*, 167 Fed. (2d) 183:

> "It is hardly thinkable that, if the effect of the Labor Management Relations Act was to make a fundamental change in the jurisdiction to deal with unfair labor practices, this important fact would not have dawned upon some member of the House or Senate or have been referred to in the course of the lengthy debate of a measure that was passed over a Presidential veto."

It is hardly thinkable that, if the effect of this Act was to supersede entirely the jurisdiction of the State courts as previously recognized by this Court in the *Gazzam case*, the *Hanke case*, and in *Hughes v. Superior Court*, that important fact would not have dawned upon some member of the House or Senate.

It is argued, however, that exclusion of state action may be implied from the nature of the legislation and that there might be a divergence between the action of the Board and the decision of a court. Insofar as the supersession of pre-existing state authority is concerned, however, it is well recognized that the exclusion of such state authority is not lightly to be inferred; that since Congress can, if it chooses, speak with clarity, all doubt should be resolved in favor of the pre-existing state power. There is, we submit, no direct conflict possible between the action of the State court and the action which the Board might take under the Taft-Hartley Act. If the Board, upon complaint and investigation finds that interstate commerce is not involved, it would take no action; and the affected party would be entirely free to secure the relief which was

here granted. If the Board found that interstate commerce was affected and that there was a secondary boycott, it would become the mandatory duty of the Board to apply to the United States District Court for the identical relief here granted by the State court. In the meantime, however, the union could continue the unfair labor practice. It could question, as it originally did in this case, whether interstate commerce was affected or whether there was solely an intrastate job. (R. 17) If the Board did apply to the District Court for a temporary restraining order, the union could contest before that Court, as it did in the *Denver case*, the question of whether interstate commerce was affected. *Sperry v. Denver Building and Construction Trades Council*, 77 Fed. Supp. 321. During that entire time, the innocent third party would be suffering irreparable injury by an act conceded to be contrary to the public policy of the state and conceded to be an unfair labor practice under the Taft-Hartley Act. It is hardly thinkable that, if this were the effect intended by the Congress, this important fact would not have dawned upon some member of the House or Senate.

If the Petitioner's theory of exclusive federal jurisdiction be adopted, Ledbetter Erection Company would have had no recourse but to stand idly by for an indeterminate period during the Board's investigation of its charge; and thereafter for a "few weeks" more while the Board decides whether or not to petition the United States District Court for a restraining order. Ledbetter Erection Company would have no recourse but to stand idly by while the union fought the jurisdiction of the Board, both before the Board and before the District Court as it did in the *Denver case*. Meanwhile Ledbetter would be suffering irreparable injury

through the idleness of its equipment, the loss of its employees protected by a union shop contract, and the forfeiture of its contract with Bear Brothers, Inc. and the risk of being subjected to damages therefor. As was stated by the Supreme Court of Oregon in the case of State ex rel Tidewater-Shaver Barge Line v. Dobson, 30 LRRM 2345 (Oregon Supreme Court, June 4, 1953) 22 Labor Cases, Par. 67,081:

> "We are unable to believe that the Congress ever intended that such an intolerable situation should exist without remedy. To hold otherwise would give such recognition to a legislative hiatus between federal and state law that would thereby create a sort of judicial island in our national life untouched by either Congressional or state statute, a sanctuary to which the offending unions might safely repair with complete immunity while holding and harassing plaintiff and its business, or vice versa, a haven of protection wherein the employer might find refuge to unjustly and illegally exploit his employees to their detriment or labor organizations to their destruction. Such is not consonant with the public policy of any state so far as we are advised, nor have we discovered any federal sanctions for such a practice. When any group, whether it be one of employer or employees, can find such a refuge beyond the reach of judicial control, we jeopardize our fundamental concepts of law and order and lay the foundation for privileged classes, inimical to the most cherished ideas of equal justice for all."

> "When the National Labor Relations Board is impotent by its own confession to implement immediate aid, then we believe it is appropriate and

necessary that our courts of equity take jurisdiction and apply such remedies as a hearing on the facts seems to dictate."

"The idea is not novel. It finds recognition and approval in principle in *Bethlehem Steel Co. et al. v. New York State Labor Relations Board*, 330 U. S. 767, 773, 91 L. ed. 1234, 67 Sup. Ct. 1026, where it is said:

'In other cases, Congress has passed statutes which initiate regulation of certain activities, but where effective regulation must wait upon the issuance of rules by an administrative body. In the interval before those rules are established, this Court has usually held that the police power of the state may be exercised. . . ' "

"We are unable to discover any persuasive distinction between an administrative body whose functions are rendered dormant by reason of its failure to issue implementing rules and regulations and an administrative body whose emergency functions are rendered impotent by causes unknown, particularly when declared in terms of delay which would defeat the remedies sought to be achieved through the agency confessing its own functional paralysis."

The instant case is much stronger than the case presented to the Oregon Supreme Court there. In that case, there was no question of the jurisdiction of the National Labor Relations Board or of that Board refusing jurisdiction for administrative reasons. In this case, the right of the Board to take jurisdiction has been upheld by this Court in the Denver case, the Chattanooga

case, and the Greenwich case.* But under the current practice, as reflected by the release of National Labor Relations Board dated October 6, 1950, entitled, "NLRB Clarifies and Defines Areas in Which it Will and Will Not Exercise Jurisdiction"; and as reflected in the brief filed Amicus Curiae on behalf of the Board (Brief p. 44) the Board for administrative reasons will not assert jurisdiction over an enterprise where it does not have (1), a direct inflow of goods from out of State sources valued at $500,000 a year; or (2), an indirect inflow valued at $1,000,000.00 a year. Since neither Ledbetter nor Bear Brothers have any outflow of material, the balance of the administrative regulation is immaterial. We are therefore faced with a situation where the Board for administrative reasons would not accept jurisdiction to stop the admitted unfair labor practice. Prior to the passage of the Taft-Hartley Act, the State courts had the right to enjoin practices which were contrary to the public policy of the State. We respectfully submit that it was not the intention of Congress to supersede this pre-existing State authority and to make of the Taft-Hartley Act a shield or an island of refuge under which any person, union, or otherwise, could engage unhindered in acts contrary to the public policy of the State and of the United States.

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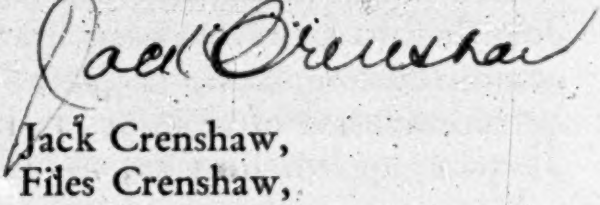
*National Labor Relations Board v. Denver Building and Construction Trades Council, 341 U. S. 675; International Brotherhood of Electrical Workers v. National Labor Relations Board, 341 U. S. 694; and Local 74, United Brotherhood of Carpenters and Joiners of America v. National Labor Relations Board, 341 U. S. 707.

CONCLUSION

We respectfully submit that the decision of the Supreme Court of Alabama is absolutely correct. The amended act did not by its terms confer any power upon the State Court; but it did not express a plain and unequivocal intent to supersede the pre-existing State authority.

Respectfully submitted,



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I.

APPENDIX A

Title 26, Section 383, Code of Alabama of 1940:

"§ 383. FREEDOM TO JOIN OR REFRAIN FROM JOINING LABOR ORGANIZATION.—Every person shall be free to join or to refrain from joining any labor organization except as otherwise provided in section 391 of this title, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family. (1943, p. 256, § 8, appvd. June 29, 1943.)"

Title 26, Section 387, Code of Alabama of 1940:

"§ 387. REFUSAL OF EMPLOYEE TO USE, ETC., NON-UNION-MADE MATERIALS, ETC.—It shall be unlawful in and about the business of an employer, for an employee to refuse to handle, install, use or work on any particular materials, equipment or supplies because not produced, processed or delivered by members of a labor organization. Provided, however, nothing herein shall be construed to prevent employers and labor organizations from contracting in writing for the use solely of union-made materials, equipment or supplies. (1943, p. 256 § 12, appvd. June 29, 1943.)

Title 14, Section 54, Code of Alabama of 1940:

"§ 54. CONSPIRACY, COMBINATION OR AGREEMENT TO INTERFERE WITH OR HINDER BUSINESS, UNLAWFUL.—Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agree-

ment, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporations, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

Title 14, Section 57, Code of Alabama of 1940:

"§ USING FORCE OR THREATS AGAINST PERSON ENGAGING IN LAWFUL OCCUPATION.—Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other person, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor."

CODE OF ALABAMA OF 1907—CHAPTER 176

BOYCOTTING AND BLACKLISTING

§ 6394-6399

Section.

6394. BOYCOTTING OR CONSPIRACY TO PREVENT OR INTERFERE WITH LAWFUL BUSINESS.—Any two or more persons who conspire together for the purpose of preventing any person, persons, firm, or corporation from carrying on any lawful business within the State of Alabama, or for the purpose of interfering with the same, shall be guilty of a misdemeanor.

6395. UNLAWFUL TO INTERFERE WITH TRADING BY OTHERS.—Any person or persons who go near to or loiter about the premises or place of business of any person, firm, or corporation engaged in a lawful business, for the purpose of influencing or inducing others not to trade with, buy from, sell to, or have business dealings with such person, firm, or corporation, or to picket the works or place of business of such other person, firm, or corporation for the purpose of interfering with or injuring any lawful business or enterprise, shall be guilty of a misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business.

6396. UNLAWFUL TO BLACKLIST, OR CIRCULATE NOTICE OF BLACKLIST.—Any person who prints or circulates any notice of boycott, boycott cards, stickers, dodgers, or unfair list, publishing or declaring that a boycott or ban exists or has existed or is contemplated against any person, firm, or corporation doing a lawful business or publishing the name of any judicial officer or other public official upon any blacklist, unfair list, or other similar list because of any lawful act or decision of such official, shall be guilty of a misdemeanor.

6397. FORCE, THREATS, OR INTIMIDA-

TION.—Any person who uses force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation at any place he or she sees fit, shall be guilty of a misdemeanor.

6398. MAINTAINING BLACKLIST UNLAWFUL.—Any person, firm, or corporation who maintains a blacklist or notifies any other firm, or corporation that any person has been blacklisted by such person, firm or corporation, or who uses any other similar means to prevent such persons from receiving employment, shall be guilty of a misdemeanor.

6399. PENALTY FOR VIOLATING PROVISIONS OF CHAPTER.—Any person, firm, or corporation violating any section of this chapter must, on conviction, pay a fine of not less than fifty dollars nor more than five hundred dollars, or be imprisoned not to exceed sixty days' hard labor for the county.

GOVERNOR'S MESSAGE TO SPECIAL SESSION OF LEGISLATURE OF OCTOBER 4, 1921

(General Laws of 1921, Page XXII)

BOYCOTTS, BLACKLISTING, ETC.

The recent coal strike in this State developed the fact that our civil and criminal statutes were inadequate to promptly and properly deal with the conditions which existed just prior to and after the strike was declared. It was then discovered that by reason of the inadequacy of the statutes of this State, relating to strikes, boycotts, blacklisting, etc., that the civil authorities were unable to prevent or even check many wrongful acts which inevitably led to the calling of the strike and to the perpetration of many heinous crimes which attended and followed the strike. Acts

of violence and commission of more serious crimes against both person and property of citizens, the inability of the civil authorities to check or control such unlawful actions on the part of those connected or sympathizing with the strikers necessitated calling out the State militia to preserve peace and order in the coal mining districts of the State. While martial law was not absolutely declared, nor the civil law actually suspended, the condition of affairs was so critical and so serious that at times it appeared almost imperative that martial law should be declared in the coal mining districts of the State. The only justifiable cause for calling out the military forces of the State or Nation is the inability of the civil authorities or inadequacy of the civil or criminal laws to so deal with the situation or condition as to secure peace and good order. If the statutes of the State had been adequate and the civil authorities had been able to promptly and properly deal with the conditions in the incipiency of the labor trouble in the mining districts, much, if not all, of the great loss of life, property, and the incurring of enormous expenses of the State could have been avoided.

I, therefore, request that the statutes be amended and revised, so as to promptly and properly deal with such situation, if it should again occur.

With some few exceptions and limitations not necessary to here point out, the following I conceive to be well recognized, if not universal, maxims as to the inalienable rights of American citizens.

First. Every citizen has the inalienable right to work or not to work; to work for whomsoever he pleases, and at whatsoever price or on whatsoever terms he pleases, provided his employer agrees to his terms.

Second. Every citizen has the inalienable right to employ or refuse to employ whomsoever he pleases, and to employ them at whatsoever price or on whatsoever terms he pleases, provided his employees agree to his terms.

Third. No man has the right to say to another: "You shall work," or "You shall not work;" or that "You shall work for this man, but not for that one;" or that "You shall work at this price, but not for that price;" or that "You shall work upon these conditions, but shall not work upon those conditions."

That ancient maxim—"So use your own as not to injure another's property"—should apply to the right to labor as well as that of property, the mere fruits of labor. The statutes of this State insofar as they can be made to do so ought to expressly declare, preserve, and guarantee the above as well as the other inalienable rights of citizens of this State.

Such conditions as existed in the coal mining districts of this State, under the leadership of irresponsible foreign agitators, if not the result or product of socialism, certainly tend to encourage or promote socialism, which often results in anarchy. Socialism is the sower of the seeds, and anarchy is the reaper of treason against the government. A conspiracy to injure the public, or the practice of acts and the teachings of doctrines with the intent or purpose, or the natural or probable result of which is to injure the public, was a crime at common law, and ought to be so declared by statute, with appropriate penalties. A conspiracy to starve or freeze the public, or even an agreement to do acts, the natural and probable result of which is to cause great suffering or inconvenience to the public, is little less

than treason against the government, when the government is like ours—nothing but the public or the people.

GENERAL LAWS OF ALABAMA OF 1921

Page 31.

ACT No. 23

To amend and revise Chapter 176 of the Code, which Chapter is entitled "Boycotting and Blacklisting."

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

That Chapter 176 of the Criminal Code of Alabama, entitled "Boycotting and Blacklisting," be amended and revised so as to read as follows:

Section 1. Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firm, corporation, or association of persons from carrying on any lawful business shall be guilty of a misdemeanor.

Section 2. Any person or persons who, without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any other person, firm, corporation, or association of people, engaged in a lawful business, for the purpose, or with the intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purposes of hindering,

delaying or interfering with, or injuring any lawful business or enterprise of another, shall be guilty of a misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business.

Section 3. Any person, firm, corporation, or association of persons who prints or circulates any notice of boycott, boycott cards, stickers, dodgers, or unfair lists, publishing or declaring that a boycott or ban exists or has existed or is contemplated against any person, firm, corporation, or association of persons doing a lawful business, shall be guilty of a misdemeanor.

Section 4. Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other persons, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor.

Section 5. Any person, firm, corporation, or association of persons who maintains what is commonly called a blacklist or notifies any other person, firm, corporation, or association that any person has been blacklisted by such person, firm, corporation, or association; or who uses any other similar means to prevent any person from receiving employment from whomsoever he desires to be employed by shall be guilty of a misdemeanor.

Section 6. Any person, firm, corporation or association of persons who without a just cause or legal excuse willfully or wantonly does not act with the intent, or with reason to believe that such act will injure, interfere with, hinder, delay or obstruct any lawful business or enterprise in which persons are employed

for wages; or who shall willfully or wantonly injure, destroy, attempt to destroy, or threaten to injure or destroy any property of another; or who shall willfully or wantonly derange, or attempt or threaten to derange any mechanics, appliances or devices, of another used in any lawful business or enterprise, shall be guilty of a misdemeanor.

Section 7. Any person, firm, corporation or association of persons who without a just cause or legal excuse, but with the intent to supplant, nullify, or impair, the owner's, operator's or manager's control of any lawful business, or enterprise, or who without just cause or legal excuse, shall take, retain, attempt or threaten to take, or retain, possession or control of any property of another or any instrumentality used in any lawful business or enterprise of another shall be guilty of a misdemeanor.

Section 8. Any person, firm, corporation or association of persons, who, without a just cause or legal excuse shall advise, encourage, or teach the necessity, duty, propriety, or expediency of doing or practicing any of the acts or things made unlawful by this act; or who print, publish, audit, issue, or knowingly circulate, distribute, or display any book, pamphlet, paper, handbill, document, or written or printed matter of any form advertising, advising, teaching, or encouraging such necessity, duty, propriety, or expediency of violating or disregarding any of the provisions of this act; or who organizes or helps to organize, gives aid or comfort to, or becomes a member of any group of persons formed to advocate, advise, or teach the necessity, duty, propriety, or expediency of violating or disregarding any of the provisions of this act shall be guilty of a misdemeanor.

Section 9. Any person, firm, corporation, or association of persons violating any of the preceding sections or provisions of this act shall on conviction be punished by a fine of not less than one hundred dollars ($100.00) or more than one thousand ($1,000.00), and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 6 months for the first conviction at the discretion of the court or judge trying the case; and on the second and every subsequent conviction in addition to the fine which may be imposed, the convicted party shall be sentenced to hard labor for not less than three months nor more than 6 months to be fixed by the judge or court trying the case.

Section 10. The provisions of this act shall take effect immediately upon its approval by the Governor.

Approved October 29, 1921.